

Practitioner's Docket No. 4849.214**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: John R. Fogle  
 Application No.: 10 /777,291 Group No.: 3724  
 Filed: 2/10/04 Examiner: P. Nguyen  
 For: TRIMMER LINE AND METHOD OF MANUFACTURE  
 Examination control No.:

**Mail Stop Appeal Brief—Patents**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**TRANSMITTAL OF APPEAL BRIEF**  
**(PATENT APPLICATION OR EX PARTE REEXAMINATION—**  
**37 C.F.R. § 41.37)**

**NOTE:** The phrase "the date on which" an "appeal was taken" in 35 U.S.C. 154(b)(1)(A)(ii) (which provides an adjustment of patent term if there is a delay on the part of the Office to respond within 4 months after an "appeal was taken") means the date on which an appeal brief under § 1.192 (and not a notice of appeal) was filed. Compliance with § 41.37 requires that: 1. the appeal brief fee (§ 41.20(b)(2)) be paid (§ 41.37(a)(2)); and 2. the appeal brief complies with §§ 41.73(c)(i)-(x). See Notice of September 18, 2000, 65 Fed. Reg. 56366, 56385-56387 (Comment 38).

1. Transmitted herewith is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on August 31, 2006

**NOTE:** Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31. 37 CFR 41.(a)(1). The brief is no longer required in triplicate. The former alternative time for filing a brief (within the time allowed for reply to the action from which the appeal was taken)

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

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 Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

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**37 C.F.R. § 1.8(a)****37 C.F.R. § 1.10 \***

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**TRANSMISSION**

- ☐ facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.

Date: 10/27/06

Signature

Gloria Gruetzmacher

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

has been removed. Appellant must file within two months from the notice of appeal. See Notice of August 12, 2004, 69 FR 49960, 49962.

## 2. STATUS OF APPLICANT

This application is on behalf of

- ☐ other than a small entity.  
☒ a small entity.

A statement:

- ☐ is attached.  
☒ was already filed.

## 3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:

- ☒ small entity \$250.00  
☐ other than a small entity \$500.00

Appeal Brief fee due \$ 250.00

## 4. EXTENSION OF TERM

**NOTE:** 37 C.F.R. § 1.704(b) ". . . an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph."

**NOTE:** The time periods set forth in 37 C.F.R. § 1.192(a) are subject to the provision of § 1.136 for patent applications. 37 C.F.R. § 1.191(d). See also Notice of November 5, 1985 (1060 O.G. 27).

**NOTE:** As the two-month period set in § 1.192(a) for filing an appeal brief is not subject to the six-month maximum period specified in 35 U.S.C. § 133, the period for filing an appeal brief may be extended up to seven months. 62 Fed. Reg. 53,131, at 53,156; 1203 O.G. 63, at 84 (Oct. 10, 1997).

☒ The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

**WARNING:** The provisions of 37 CFR § 1.136 do not apply in an *ex parte* reexamination. Any requests for extension must be made pursuant to 37 CFR 1.550(c).

(complete (a) or (b), as applicable)

- (a) ☐ Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(5)) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/> one month	\$ 120.00	\$ 60.00
<input type="checkbox"/> two months	\$ 450.00	\$ 225.00
<input type="checkbox"/> three months	\$ 1,020.00	\$ 510.00
<input type="checkbox"/> four months	\$ 1,590.00	\$ 795.00
<input type="checkbox"/> five months	\$ 2,160.00	\$1,080.00

Fee: \$ \_\_\_\_\_

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☒ An extension for one months has already been secured, and the fee paid therefor of \$ 60.00 is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ -0-

or

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

#### 5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$ 250.

Extension fee (if any) \$ -0-

**TOTAL FEE DUE \$ 250.**

#### 6. FEE PAYMENT

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 250.00
- ☐ Authorization is hereby made to charge the amount of \$ \_\_\_\_\_
- ☐ to Deposit Account No. \_\_\_\_\_
- ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

- ☐ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.
- ☐ A duplicate of this paper is attached.

#### 7. FEE DEFICIENCY

**NOTE:** If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to change the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, 1065 O.G. 31-33.

- ☐ If any additional extension and/or fee is required,

AND/OR

- ☐ If any additional fee for claims is required, charge:
- ☐ Deposit Account No. \_\_\_\_\_
- ☐ Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

Date: 10/27/06

Reg. No.: 19,877

Customer No.:



SIGNATURE OF PRACTITIONER

LaValle D. Ptak

(type or print name of practitioner)

28435 N. 42nd Street

P.O. Address

Cave Creek, AZ. 85331

(Transmittal of Appeal Brief [9-6.1]—page 4 of 5)



Practitioner's Docket No. 4849.214

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: John R. Fogle  
Application No.: 10 /777,291 Group No.: 3724  
Filed: 2/10/04 Examiner: P. Nguyen  
For: TRIMMER LINE AND Reexamination control No.:  
METHOD OF MANUFACTURE

Mail Stop Appeal Briefs-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF (37 C.F.R. § 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on 8/31/06

The fees required under § 41.20, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***  
(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

☒ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

**37 C.F.R. § 1.8(a)**

**37 C.F.R. § 1.10 \***

☒ with sufficient postage as first class mail.

☐ as "Express Mail Post Office to Addressee"

Mailing Label No. \_\_\_\_\_ (mandatory)

**TRANSMISSION**

☐ facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.

Date: 10/27/06

Gloria Gruetzmacher  
Signature

Gloria Gruetzmacher  
(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

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**NOTE:** Appellant's brief is required by 37 C.F.R. § 41.37 to contain the following items, under appropriate headings, in the following order:

- (1) identification of the real party in interest;
- (2) identification of related appeals and interferences;
- (3) status of all the claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.
- (4) status of any amendment filed subsequent to final rejection;
- (5) summary of the claimed subject matter defined in each independent claim involved in the appeal;
- (6) concise statement of each ground of rejection presented for review;
- (7) Contentions of appellant with respect to each ground of rejection presented for review, with each ground treated under a separate heading. When multiple claims subject to the same ground of rejection are argued as a group, the claims may stand or fall together. A claim argued separately should be placed under a subheading identifying the claim by number;
- (8) an appendix containing a copy of the claims involved in the appeal;
- (9) an appendix containing copies of the evidence entered by the examiner and relied upon by appellant, with a statement setting forth where in the record the evidence was entered; and
- (10) an appendix containing copies of decisions rendered by a court or the Board in any related proceeding identified.

See MPEP § 1206 for elaboration of these requirements.

Pursuant to 37 C.F.R. § 41.37(d), if a brief is filed that does not comply with the requirements, as set forth in paragraph (c) of the rule, the appellant will be notified of the reasons for noncompliance and provided with a period of one month within which to file an amended brief. The one-month period will not be extended. If appellant does not file a brief overcoming the reasons for noncompliance within the one-month period, or files an amended brief that does not overcome all the reasons for noncompliance stated in the notification, the appeal will be dismissed.

- I. REAL PARTY INTEREST
- II. RELATED APPEALS AND INTERFERENCES
- III. STATUS OF CLAIMS
- IV. STATUS OF AMENDMENTS
- V. SUMMARY OF CLAIMED SUBJECT MATTER
- VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL
- VII. ARGUMENT
- VIII. CLAIMS APPENDIX
- IX. EVIDENCE APPENDIX
- X. RELATED PROCEEDINGS APPENDIX
- ☐ OTHER MATERIALS THAT APPELLANT CONSIDERS NECESSARY OR DESIRABLE

The final page of this brief bears the practitioner's signature.

**WARNING:** "Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown." 37 C.F.R. § 41.37(c)(vii). The Board has leeway to consider arguments or authorities not included in the brief under circumstances where the failure to include them can be justified. Notice of May 3, 1988 (1092 O.G. 26-35).

(Appeal Brief—First Page [9-6.2]—page 2 of 20 )

**I REAL PARTY IN INTEREST**

(37 C.F.R. § 41.37(c)(1)(i))

*NOTE: The brief shall contain "A statement identifying the real party in interest." 37 CFR 41.37(c)(1)(i). This is true regardless of whether the party named in the caption of the brief is the real party in interest.*

The real party in interest in this appeal is: \_\_\_\_\_

---

John R. Fogle  
8450 Tumacacori Dr.  
Carefree, AZ 85254

Robert L. Phillips  
13852 N. 67th Place  
Scottsdale, Arizona 85254

## II RELATED APPEALS AND INTERFERENCES

(34 C.F.R. § 41.37(c)(1)(ii))

**NOTE:** A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. 37 CFR 41.37(c)(1)(ii).

(complete (A) or (B), as applicable)

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal:

A ☒ there are no such appeals or interferences.

B ☐ these are as follows:



### **III STATUS OF CLAIMS**

(37 C.F.R. § 41.37(c)(1)(iii))

*NOTE: The brief shall contain: A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed. 37 CFR 41.37(c)(1)(iii).*

The status of the claims in this application are:

#### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are:

Claims 1 to 29

#### **B. STATUS OF ALL THE CLAIMS**

*(if there are no claims in a category, indicate: NONE)*

1. Claims cancelled: none
2. Claims withdrawn from consideration but not cancelled: 5-7, 11, 12, 16-29
3. Claims objected to: none
4. Claims allowed or confirmed: none
5. Claims rejected: 1-4, 8-10 and 13-15

#### **C. CLAIMS ON APPEAL**

The claims on appeal are:

Claims 1 to 4, 8 to 10 and 13-to 15

**IV STATUS OF AMENDMENTS**  
(37 C.F.R. § 41.37(c)(1)(iv))

**NOTE:** *The brief shall contain "A statement of the status of any amendment filed subsequent to final rejection." 37 C.F.R. § 41.37(c)(1)(iv). "The appellant should state, insofar as understood by the appellant, the status of any amendment filed subsequent to final rejection, i.e., whether or not the amendment has been acted upon by the examiner, and if so, whether it was entered, denied entry, or entered in part." The inclusion of the status of claims (Section I) [now Section 3] and this section will advise the examiner of what the appellant considers the status of the claims and post-final rejection amendments to be, allowing any disagreements on these questions to be resolved before the appeal is taken up for decision by the Board. Notice of May 3, 1988 (1092 O.G. 26-35). See M.P.E.P. § 1206, 8th ed.*

The appealed claims all are original claims. No amendments have been made to any of the claims.

**V. SUMMARY OF CLAIM SUBJECT MATTER**  
37 CFR §41.37 (c)(1)(v)

The subject matter of Claims 1 to 4, 8 to 10 and 13 to 15, the only claims under consideration at the time of the final rejection, is directed to string trimmer lines used in rotating string trimmers. Claim 1 and Claim 9 are the only two independent claims currently under appeal. Claims 2 to 4, 8 and 13 to 15 are dependent, either directly or through one another, upon Claim 1. Claim 10 is dependent upon independent Claim 9.

Both independent Claims 1 and 9 are directed to a string trimmer line in the form of an elongated filament member having a cross section throughout the length thereof with a thickness which is less than the width thereof, and which has top and bottom surfaces. Claim 9 recites that at least a portion of the top and bottom surfaces are located in parallel planes. Claim 1 recites that the top and bottom surfaces are located in first and second parallel planes, and further recites a portion of at least one of the top and bottom surfaces located in a plane other than the first and second planes.

With respect to independent Claim 1, the claimed configuration is shown in a wide variety of forms in Figures 4 through 14. All of the different cross sectional configurations which are illustrated in these different figures come within the scope of the recitation of Claim 1. Independent Claim 9, with respect to the recitation of the line configuration, also is illustrated in Figures 4 through 14, and additionally, in Figures 3 and 15.

Claim 2, dependent upon Claim 1, further recites the parallel transverse cross sections of the elongated filament member are the same throughout the length of the elongated filament member. Configurations coming within the scope of this claim are illustrated in Figures 4 through 9.

Dependent Claims 3 and 8 (dependent, respectively, upon Claim 2 and Claim 1) and dependent Claim 10 (dependent upon independent Claim 9) all recite the elongated filament member as being made of high molecular weight orientable plastic. The reference to high molecular weight is found on Page 13, Lines 1 and 2, and Page 14, Lines 19 and 20 of the specification. The orientation recited in these claims as “orientable plastic” has its basis on Page 14, Lines 25 and 26 and Page 15, Lines 13 to 21.

Claim 4 is dependent upon Claim 3 and recites the string trimmer line as being made of extruded plastic material. Claim 5 is a dependent claim which recites at least one groove in at least one of the top and bottom surfaces, extending the length of the elongated filament member. Reference to this feature may be found in Figures 5,6,7 and 8. Dependent Claim 6 (dependent upon Claim 5) recites that the elongated filament member has first and second tapered edges extending the length thereof in a plane intermediate the planes of the top and bottom surfaces. This feature is shown in Figures 4,5,6,7,8 and 9.

Claim 7 is directed to a variation of the elongated string trimmer line and is dependent upon Claim 5. This claim recites that the thickness of the elongated filament member adjacent a center line is less than the thickness adjacent the edges. This feature is illustrated in Figures 5,6,7 and 8.

Finally, independent Claim 9, in addition to the features mentioned above in conjunction with both independent Claims 1 and 9, includes a specific recitation that the molecular orientation in both the direction of the length and the direction of the width results in bi-axial molecular orientation of the material. The basis for this recitation is found in several places in the specification. The greatest detail is given on Page 15, Lines 1 to 21; and other references are found on Page 10, Lines 17 to 19

and Page 14, Lines 23 to 26. Figures 22,23 and 24 also illustrate the bi-axial orientation specifically recited in Claim 9.

## **VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

A single reference has been cited by the Examiner to reject all of the claims under appeal in this application. This reference is the publication No. US2005/0188547 A1 to Legrand. This published application was filed in the United States on December 7, 2004 as a continuation of PCT application PCT-FR03/01727 filed on January 10, 2003. The present application under appeal was filed on February 10, 2004. Claims 1 and 2 have been rejected under 35 U.S.C. §102(c) as being clearly anticipated by the Legrand publication.

Claims 3,4,8 to 10 and 13 to 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Legrand.

## **VII. ARGUMENTS**

### **37 CFR §1.192(c)(7)**

1. 37 CFR §1.131(a)(e)
2. 35 USC §102(e)

### **ARGUMENT RELIED UPON**

Although the final rejection from which this appeal is taken is of Claims 1 and 2 under 35 U.S.C. §102(c) and of Claims 3,4,8 to 10, 13 to 15 under 35 U.S.C. §103(a), both based on the sole reference of the Legrand publication US2005/0188547, the only issue is whether applicant's Affidavit under 37 CFR §1.131 is effective to remove the Legrand publication as a reference under 35 U.S.C. §102(e) from rejecting the claims of this application. This appeal is not directed to any specific arguments concerning the rejections under 35 U.S.C. §102 or under 35 U.S.C. §103.

The basic facts are as follows: the Legrand United States application was filed on December 7, 2004, which is several months after applicant's filing date of February 10, 2004. Consequently, in order for Legrand to even be considered as a reference against any of applicant's claims, the basis for this consideration must be the PCT application No. PCT/FR03/01727 filed on January 10, 2003.

In the first paragraph of the Legrand application, the statement is made that it is a continuation of international application PCT/FR03/01727 filed on 10 June, 2003, which designated the U.S. The inventor, Emmanuel Legrand, is a resident of France. The Legrand PCT application PCT/FR03/01727 was filed in the French language. For a reference to be effective under 35 U.S.C. §102(e), an international application filed under the treaty defined in Section 351(a) shall have the effects, for the purposes of Sub-section 102(e), of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such

treaty in the English language. In submitting applicant's Affidavit under 35 U.S.C. §1.131, applicant provided what applicant considered to be adequate proof of conception and reduction to practice of applicant's claimed invention prior to June 10, 2003, the PCT filing date of the cited reference. Applicant considered the Affidavit to be sufficient to meet the requirements of 35 CFR §1.131 to overcome the Legrand reference, on the basis of conception and reduction to practice prior to the earliest possible effective date of the reference, or conception of the invention prior to the earliest possible effective date of the reference (June 10, 2003) coupled with due diligence from prior to June 10, 2003 to reduction to practice and the filing of applicant's application on February 10, 2004.

If, however, the Legrand PCT application was not published under Article 21(2) of the PCT treaty in the English language, it cannot be relied upon as effective as of June 10, 2003. If this is the case, the Legrand United States filing date is the earliest possible effective date of the Legrand reference under 35 U.S.C. §102(e). This date is nearly nine months after applicant's filing date. This removes Legrand from being a reference against any of applicant's claims on any basis.

For the purposes of making this response complete, however, applicant respectfully submits that the issue in this case is the Examiner's refusal to accept applicant's Affidavit under 37 CFR §1.131 to overcome the Legrand reference.

Applicant presented in his Affidavit, statements and exhibits establishing conception of applicant's invention as early as April 7, 1992. The Examiner has taken the position that there was not reasonable diligence, such as filing an application for patent or an actual reduction to practice, prior to the June 10, 2003 priority date of the Legrand application. Among the reasons given by the Examiner were that applicant (appellant here) could have applied for a patent for string trimmer line



alone, even though no trimmer head was available. Three patents to trimmer line configurations, including one of applicant's own patents, were cited as evidence that this could be done. It should be noted, however, that all three of the patents cited by the Examiner in the final rejection have a cross-sectional configuration which can be used with the round hole exit openings in conventional string trimmer machines designed for use with string trimmer line having a circular cross section. The string trimmer line recited in the claims under appeal here recite a cross section which has a thickness less than the width thereof. This configuration precludes the use of such a line with string trimmer heads having circular line exit openings.

The important point to note here, however, is not whatever applicant may have done between 1992 and any intermediate dates between then and June 2003. It is sufficient for an affidavit under 37 CFR §1.131 that applicant conceived (and may or may not have reduced to practice) the invention prior to the effective date of the reference. In this case, the earliest possible effective date is June 10, 2003 (provided Legrand can even rely upon that date, which is doubtful). As applicant noted in the Request for Reconsideration of the final rejection, applicant could just as well have started with the facts presented in applicant's §131 affidavit with those beginning in Paragraph 15 (or Paragraph 16, or Paragraph 17), all of which effectively show conception and reduction to practice of applicant's invention just prior to June 10, 2003. Applicant's Affidavit under 37 CFR §1.131 is appended hereto in Section IX *Appendix of Evidence*.

Paragraph 15 of applicant's affidavit recites that applicant sent samples of a flat blade line... for evaluation on April 11, 2003 (clearly showing conception). These events and the continuing steps recited in the §131 affidavit during 2003, which were taken by applicant leading up to the filing of this application on February 10, 2004, clearly establish conception and reduction to practice from

a date just prior to June 10, 2003, or at least conception prior to June 10, 2003 coupled with due diligence to the filing of applicant's application on February 10, 2004.

Applicant respectfully submits that the Examiner is in error in basing a final rejection on alleged failure of due diligence from 1992 until applicant's filing date of February 10, 2004. The date of concern and the period of concern for which consideration must be made is a date just prior to June 10, 2003 up to the filing of applicant's present application on February 10, 2004. None of the facts set forth in the §131 affidavit have been challenged by the Examiner.

### **CONCLUSIONS**

1. The sole reference, Legrand publication No. US2005/0188547, used to reject all of the claims under consideration in this application, is ineffective as a reference and must be withdrawn.

2. Alternatively, acceptance of applicant's Affidavit under 37 CFR §1.131 as overcoming the Legrand application 2005/0188547 is requested.

3. A reversal of the final rejection of appealed claims 1 to 4, 8 to 10, and 13 to 15 is therefore respectfully requested.

The oral hearing is hereby waived.

## VIII. APPENDIX OF CLAIMS

The text of the claims of all involved in this appeal are:

1. A string trimmer line including:

an elongated filament member having a cross section throughout the length thereof with a thickness which is less than the width thereof and which has top and bottom surfaces located in first and second parallel planes, and a portion of at least one of the top and bottom surfaces located in a plane other than the first and second planes.

2. A string trimmer line according to Claim 1 wherein parallel transverse cross sections of the elongated filament member are the same throughout the length of the elongated filament member.

3. A string trimmer line according to Claim 2 wherein the elongated filament member is made of a high molecular weight orientable plastic.

4. A string trimmer line according to Claim 3 wherein the elongated filament member is made of extruded plastic material.

8. A string trimmer line according to Claim 1 wherein the elongated filament member is made of a high molecular weight orientable plastic.

9. A string trimmer line including an elongated filament member made of material having molecular orientation in both the direction of the length thereof and in the direction of the width thereof, resulting in bi-axial molecular orientation of the material, the elongated filament member further having a cross section throughout the length thereof with a thickness which is less than the width thereof and which has top and bottom surfaces, at least a portion of which are located in parallel planes.

10. A string trimmer line according to Claim 9 wherein the elongated filament member is made of a high molecular weight orientable plastic.

13. A string trimmer line according to Claim 1 wherein the elongated filament member is made of extruded plastic material.

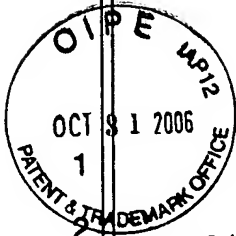
14. A string trimmer line according to Claim 13 wherein the elongated filament member is made of material having molecular orientation in both the direction of the length thereof and in the direction of the width thereof, resulting in bi-axial molecular orientation of the material.

15. A string trimmer line according to Claim 14 wherein the elongated filament member is made of a high molecular weight orientable plastic.

## **IX. APPENDIX OF EVIDENCE**

Attached hereto is a copy of applicant's Affidavit under 37 CFR §1.131. This affidavit was entered into the record by the Examiner with applicant's communication filed on February 27, 2006.

This was applicant's response to the initial Office Action on the merits.



Copy

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : John R. Fogle )  
Art Unit: 3724 )  
Serial No.: 10/777,291 )  
Examiner: P. Nguyen )  
File Date : 2/10/04 ) Confirmation No. 5288 )  
For : TRIMMER LINE & METHOD OF )  
- MANUFACTURE )

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS  
BEING DEPOSITED WITH THE UNITED STATES POSTAL  
SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE  
ADDRESSED TO:

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P.O.Box 1450, Alexandria, VA 2/24/06  
Date of Deposit

Gloria Guzman  
SIGNATURE

AFFIDAVIT UNDER 37 C.F.R. §1.131

Honorable Commissioner of  
Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

Now comes JOHN R. FOGLE, and being first duly sworn on oath,  
deposes and says that:

1. On April 7, 1992, Affiant conceived of various designs for  
a rectangular cross-section flat string trimmer line with pointed  
or sharpened edges similar to Figure 1 of LeGrand patent  
application, Publication 2005/01A8547, and designed a die  
configuration for producing such a line configuration, as shown by

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5. Affiant's company, Desert Extrusion, through its



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1 president, Robert Phillips, entered into a confidentiality and non-  
2 disclosure agreement with Vincent Morabit concerning the  
3 development generally outlined in the letter of Exhibit 3; and a  
4 copy of that non-disclosure agreement, dated June 3, 1998 by Robert  
5 Phillips, and May 29, 1998 by Vincent Morabit, is attached hereto  
6 as Exhibit 4.  
7

8 6. On June 5, 1998, Affiant prepared various head/line  
9 combination designs for handling line configurations of various  
10 cross sections, including relatively flat line configurations, some  
11 of which are shown on Page 3 of Affiant's three pages and notes of  
12 Exhibit 5 attached hereto.  
13

14 7. On June 6, 1998, Affiant made further notes and drawings  
15 relative to a string trimmer line head and various line  
16 configurations, including cut pieces of line having at least a flat  
17 cross section in part; and a copy of the two pages of notes of June  
18 6, 1998 are attached hereto as Exhibit 7.

19 8. On June 8, 1998 Affiant further designed other trimmer  
20 line configurations, including configurations where the thickness  
21 of the cross section was less than the width thereof; and these  
22 configurations were entered in two pages of notes identified in  
23 attached Exhibit 7.  
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1           9.     On October 23, 2002, Affiant, on behalf of Desert  
2 Extrusion, entered into a confidentiality agreement effective 22  
3 October, 2002 with Core Innovation, LLC for the development of  
4 rotary motion trimmers by Core, in conjunction with development of  
5 grass trimmer line and trimmer heads by Affiant's company Desert  
6 Extrusion. A copy of a confidentiality agreement is attached  
7 hereto as Exhibit 8.  
8

9           10.    On October 24, 2002, Matt Jore of Core Innovations  
10 visited Affiant's company for the purpose of discussing the  
11 development of the devices and lines underlying the confidentiality  
12 agreement of Exhibit 8. A copy of Affiant's calendar noting this  
13 visit is attached hereto as Exhibit 9.  
14

15           11.    On October 29, 2002, Affiant had an exchange of e-mail  
16 correspondence with Chad Komlofske of Core Innovation concerning  
17 development of trimmer line blade/string possibilities. This  
18 communication concerned the production and testing of trimmer line  
19 having substantially flat cross sections, that is parallel upper  
20 and lower surfaces with varying aspect ratios. A copy of that e-  
21 mail correspondence interchange is attached hereto as Exhibit 10.  
22

23           12.    On January 14, 2003, Affiant sent a purchase order to  
24 Precision Gauge for four different die hole configurations, as  
25 shown on the purchase order. All of these die hole configurations  
26 are flat, that is having substantially parallel top and bottom

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1 surfaces, with aspect ratios of 4:1, 4:1, 3:1, and 5:1,  
2 respectively. A copy of that purchase order is attached hereto as  
3 Exhibit 11. Exhibit 11 is a five-page exhibit, with Pages 2  
4 through 5 comprising detailed drawings of the line die hole cross  
5 section configuration.  
6

7 13. On January 27, 2003, Precision Gauge delivered to Desert  
8 Extrusion the four die molds defined in the purchase order of  
9 Exhibit 11; and copies of these delivery notices are attached  
10 hereto as the four pages of Exhibit 12.

11 14. An invoice from Precision Gauge to Desert Extrusion was  
12 received by Affiant's company Desert Extrusion on February 12,  
13 2003, for the molds of Exhibit 12 with the die hole inserts shown  
14 in Exhibit 11. This invoice includes four pages separately  
15 identifying each of the four molds of Exhibit 12; and a copy is  
16 attached hereto as Exhibit 13.  
17

18 15. On April 11, 2003, Affiant sent samples of the flat blade  
19 line made with the die molds of Exhibits 11, 12 and 13 to Core  
20 Innovation for evaluation. This letter includes test data  
21 concerning line made in accordance with the samples, along with  
22 reproductions of the cross sections of the various line samples.  
23 A copy of this letter and the test result reports, along with the  
24 sketches of the cross sections, is attached hereto as Exhibit 14 (9  
25 pages).  
26

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16. On May 20, 2003, Affiant made sketches of a fixed line head for a string trimmer machine which was designed for use with flat line having aspect ratios of the type shown and described in Exhibits 11 and 12. A copy of the two pages of sketches of this fixed line head for flat line is attached hereto as Exhibit 15.

17. Affiant met with Affiant's patent lawyer, LaValle D. Ptak, on May 21, 2003 to discuss the fixed line head of Exhibit 15, and authorized a patent novelty search for such fixed line head. The patent novelty search was initiated by Mr. Ptak on May 21, 2003, as shown in the letter of May 21, 2003 from LaValle Ptak to Affiant, a copy of which is attached hereto as Exhibit 16.

18. On July 16, 2003, Affiant produced a note of test data concerning the performance of drag of various line samples with different aspect ratios and sizes, based on test performance performed by Affiant. A copy of this note and a chart of the measured test performance is attached hereto as Exhibit 17 (1 page).

19. A flat line head prototype was ordered from Precision Gauge, LLC; and this prototype was shipped to Affiant's company on July 21, 2003 and invoiced (received by Affiant's company, Desert Extrusion) on August 8, 2003. This prototype from Precision Gauge was based on Affiant's sketch of Exhibit 15. A copy of the invoice

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1 for this flat line prototype head from Precision Gauge is attached  
2 hereto as Exhibit 18.

3 20. Following delivery of the prototype indicated on the  
4 invoice of Exhibit 18, Affiant, on behalf of Desert Extrusion,  
5 requested a quote for tooling for the production of a head for use  
6 with flat line. This head was referred to between Affiant and  
7 National Die Casting, Inc. as "Slick Willy". A tool quote from  
8 National Die Casting dated September 19, 2003 for the production of  
9 tooling to produce the head in accordance with the prototype  
10 referred to in the invoice of Exhibit 18 is attached hereto as  
11 Exhibit 19 (2 pages).  
12

13 21. On October 22, 2003, Affiant submitted a letter  
14 memorandum to Affiant's attorney LaValle Ptak (referred to as Val  
15 Ptak) concerning points for an agreement with Core Innovation in  
16 conjunction with the flat line cutting system. A copy of that  
17 letter memorandum is attached hereto as Exhibit 20 (2 pages).  
18

19 22. On February 11, 2004, Affiant, along with Chad Komlofske  
20 and Lincoln Jore of Core Innovation tested machines and flat  
21 trimmer line in Phoenix, Arizona; and Core Innovation prepared a  
22 report of such testing, a portion of which is attached hereto as  
23 Exhibit 21 (3 pages).  
24  
25  
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23. Affiant's application Serial No. 10/777,291 covering the flat trimmer line invention to which this affidavit is pertinent was filed on February 10, 2004.

FURTHER, Affiant sayeth not.

  
John R. Fogle

Date: February 24, 2006

State of Arizona )  
County of Maricopa )

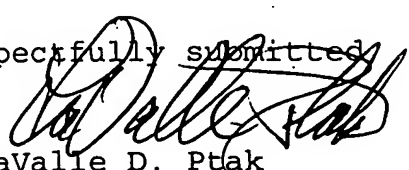
SS: Before me personally appeared John R. Fogle, to me known to be the person described in the above Affidavit, who signed the foregoing in my presence and made oath before me to the allegations set forth therein, on this 24 day of February, 2006.

  
Notary Public

My Commission Expires:



Respectfully submitted,

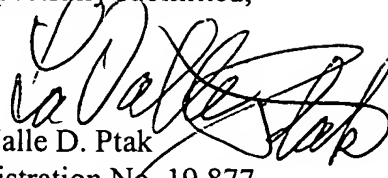
  
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Telephone: (480) 419-9019

Date: 2/24/06

## **X. APPENDIX OF RELATED DECISIONS**

None

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'LaValle D. Ptak', written over the printed name.

LaValle D. Ptak

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10/17/06